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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

~~VICENTE MANUEL SANCHEZ~~ TEOFIL BRANK ~~AROGON~~,

Defendant.

Case No. 15-0391M

OPPOSITION TO GOVERNMENT DETENTION REQUEST AND REQUEST FOR DETENTION HEARING UNDER 18 U.S.C. § 3142

MEMORANDUM OF POINTS AND AUTHORITIES

Release pending trial is governed by the Bail Reform Act of 1984 (BRA), which mandates release of a person facing trial under the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person as required. 18 U.S.C. § 3142(c)(2). *United States v. Motamedi*, 767 F.2d 1403 (9th Cir. 1985). The presumption under the BRA is that there is no detention hearing, and that a defendant should be released on personal recognizance or unsecured appearance bond. 18 U.S.C. § 3142(a), (b). The plain language of the BRA makes clear that a detention hearing is not a routine event that the government is entitled to simply for the asking. Rather, a detention hearing, which is provided for at subsection (f) of the statute, is appropriate only in certain, limited circumstances. 18 U.S.C. § 3142(f). The BRA gives the government two bases for any detention hearing request.

Under 18 U.S.C. § 3142(f)(1), the government may seek a detention hearing where the defendant has been charged in a case involving: (1) a crime of violence, which carries a maximum of ten years or more; (2) an offense which carries a maximum of life imprisonment or death; (3) serious drug offenses; (4) felonies committed by certain repeat offenders; and (5) felonies that are not otherwise crimes of violence that involve a minor victim or the possession or use of a firearm, destructive device, or any other dangerous weapon. *United States v. Gan*, 2013 WL 1345733, at * 3 (N.D.Cal. April 2, 2013) (citing 18 U.S.C. § 3142(f)(1)).

Under 18 U.S.C. § 3142(f)(2), the government may seek a hearing in a case that involves either "(A) a serious risk that the defendant will flee or (B) a serious risk that [the defendant] will obstruct or attempt to obstruct justice." *Id.*

Here, the evidence before the Court does not support the conclusion that there is a *serious risk* that defendant will flee or attempt to obstruct justice. The statutory requirement is not that there be a mere risk: there is in every case a possibility of risk. Cases that do not "involve[] . . . a serious risk" of flight or obstruction (or a crime of violence), are governed by 18 U.S.C. § 3142 (a) & (b), which mandate release on

personal recognizance or unsecured appearance bond. That is to say, even in cases where there is a "risk" -- but not a "serious risk" -- there is no detention hearing, and the Court must fashion conditions under 18 U.S.C. § 3142(c) for release. The statutory language (regarding detention hearings) speaks of a *serious* risk. 18 U.S.C. § 3142(f)(2). *See, e.g., United States v. Himler,* 797 F.2d 156, 162 (3rd Cir.1986) ("Mere opportunity for flight is not sufficient grounds for pretrial detention.") (citation omitted); *United States v. Chen,* 820 F.Supp. 1205, 1208 (N.D.Cal.1992) ("Section 3142 does not seek ironclad guarantees, and the requirement that the conditions of release 'reasonably assure' a defendant's appearance cannot be read to require guarantees against flight.") (citations omitted). The preliminary question of whether a detention hearing should be held, based on the government's allegation that the defendant presents a "serious risk of flight" (or obstruction), is a serious burden for the government to meet. *See United States v. Giordana*, 370 F. Supp. 2d 1256 (S.D.Fla. 2005) (serious charges do not necessarily equal serious flight risk).

A. Danger

If the defendant is not charged with an offense that is enumerated in 18 U.S.C. § 3142(f)(1) the defendant cannot be detained on the basis of danger to the community . *Himler*, 797 F.2d 156; *United States v. Ploof*, 851 F.2d 7 (1st Cir. 1988); *United States v. Friedman*, 837 F.2d 84 (2d Cir. 1988).

If the government alleges that the defendant is a danger to the community, the danger it claims the defendant poses must relate to the federal case; unrelated allegations of danger to others is insufficient to justify an order of detention. *Ploof*, 851, F.2d at 11; *United States v. Say*, 233 F. Supp. 2d 221 (D.Mass. 2002).

The government bears the burden of showing dangerousness by clear and convincing evidence. 18 18 U.S.C. § 3142(f); *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991). The mere fact that a defendant is charged with a crime of violence will not satisfy the clear and convincing evidence standard. *United States v. Chimurenga*, 760 F.2d 400 (2d Cir. 1985). And only when there is a "strong possibility

that a person will commit additional crimes if released" is the community interest in safety sufficiently compelling to overcome the criminal defendant's right to liberty. *Ploof*, 851 F.2d 7. Clear and convincing evidence means proof that the particular defendant actually poses a threat to the community, and not that a defendant in theory poses a danger. *United States v. Patriarca*, 948 F.2d 789 (1st Cir. 1991).

B. Flight

In the event a detention hearing is held -- which it should not be -- clear and convincing evidence should likewise be required to show that no combination of conditions will assure the appearance of the defendant, since appearance is a factor equal to danger to the community under the Bail Reform Act, and any other interpretation of the statute would render it unconstitutional. *United States v. Motamedi*, 767 F.2d 1403 (9th Cir. 1985) (Boochever, J., concurring and dissenting in part).

II. CONCLUSION

For the foregoing reasons, the Court should deny the requested detention hearing. In the event that a detention hearing is held, the Court should deny the detention request and set a bond with appropriate conditions.

Respectfully submitted,

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